IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9331 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMDEVBHAI RANCHODBHAI PATEL - Petitioner(s)
Versus
MAMLATDAR & ALT & 16 - Respondent(s)

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Appearance :

MR JAL SOLI UNWALA for Petitioner(s) : 1,
MS MAITHILI MEHTA, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 17.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/04/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order and/or direction declaring that the respondent – The District

Inspector of Land Records as well as the Collector have no powers as well as authority to pass the impugned order much less any order with respect to the disputed property, till the dispute regarding the disputed property is pending. The petitioner has also further prayed to quash and set aside the impugned order passed by the Collector dated 24th February, 2006 (Annexure – L) as well as the notice for carrying out the measurement dated 5th April, 2006 (Annexure – Q).

2. It is required to be noted that by communication/order dated 24th February, 2006, which is impugned in the present Special Civil Application, the Collector has not passed any order directing the DILR to have measurement of the property/land in question. However, he has simply on an application given by the private respondents has communicated to the concerned police authority to give police protection at the time of Inspection. Considering the fact that there may not be any law and order problem, the Collector being

SDM, has directed to give police protection, than it cannot be said that there is any illegality committed by the Collector. At the same time, the petitioner also challenges the Notice, which is at Annexure – Q to the petition, however, it is by the Talati-cum-Mantri and it is a consequential order of the order passed by the DILR. It is also not in dispute that in fact, the measurement of the land in question has already taken place on 18th April, 2006 and therefore, the present Special Civil Application has become infructuous.

3.Shri Unwala, learned advocate appearing on behalf of the petitioner has submitted that inspite of the fact that the DILR has already taken the measurement on 18th April, 2006 and as the petitioner has prayed for a declaration that the DILR has no jurisdiction and/or authority pending the Civil Suit, the petition may be considered on merits. It is apprehended by Shri Unwala, learned advocate appearing on behalf of the petitioner, that the measurement carried out by the DILR will

be used by the petitioner before the Civil Court and the Civil Court will be influenced.

4.At the outset it is required to be noted that merely because the measurement carried out by the DILR, may be at the instance of the private respondents, the Civil Court will not be influenced by it and the Civil Court is bound to consider the entire case on merits and on the basis of the evidence that may be led by the parties.

5.Under the circumstances, the apprehension is not well founded and therefore, the present Special Civil Application is required to be dismissed and is accordingly dismissed.

(M.R.SHAH, J.)

kdc.